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No. 98-2035

In The

Supreme Court of the United States

FRANK AND HELEN McGEE

Petitioners,

v.

COUNTY OF ORANGE,
A Political Subdivision of the State of California,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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JURISDICTION

Respondent County of Orange does not contest this Court's jurisdiction over this petition pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This petition seeks to attack the Ninth Circuit's opinion below, which affirmed the lower court's determination that the applicable state statutes of limitations barred petitioner's claim in bankruptcy.

A. Procedural Facts

On December 6, 1994 the County of Orange filed a petition under Chapter 9 of Title 11 of the United States Code. On February 23, 1996, Mr. and Mrs. McGee filed a claim in the bankruptcy court for property tax refunds for the years 1980 through 1994. On June 2, 1997 the bankruptcy court entered a final order disallowing the claim as to the years 1980-1991, finding that the claim for refunds for those years was barred by the applicable state statutes of limitations. [Petition App 16-App 17.] Mr. and Mrs. McGee appealed to the United States Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"). The BAP entered a memorandum decision affirming the bankruptcy court on February 4, 1998. [Petition App 4-App 15.] Mr. and Mrs. McGee appealed to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit entered a memorandum decision affirming the BAP's decision on February 17, 1999. [Petition App 2-App 3.]

Mr. and Mrs. McGee filed a petition for rehearing with the Ninth Circuit, which was denied on March 19, 1999. [Petition App 1.] Mr. and Mrs. McGee then filed this petition.

B. Substantive Facts

Mr. and Mrs. McGee own a real property residence in Orange County. They filed their claim in the County's bankruptcy case seeking a partial refund for property taxes that they paid on their residence for the years 1980-1994. When the County reviewed the claim, the County determined that it had merit as to the four years prior to the filing of the claim. The County found that it had entered an incorrect value on the property tax roll for the year 1980 and that value had carried forward, plus the applicable inflationary rate, for each year thereafter pursuant to California property tax law. The County thereupon revised the tax roll for 1995, and refunded the overpaid property taxes for the years 1992, 1993, and 1994. The County then asserted the applicable four-year statutes of limitations as to the years prior to 1992 in its objections to the claim.

C. Petitioners' Right To A Refund Of Excess 1980-1991 Taxes Must Be Found Within California's Property Tax Law

Under the County's Chapter 9 Plan, all property tax refund claims were classified as unimpaired and the County and each claimant retained unaltered all legal, equitable, and contractual rights each might have under California law. Petitioners' right to a refund of the excess

1980-1991 property taxes must be found within California's property tax law.

REASONS FOR DENYING THE WRIT

A. Petitioners Have Failed To Show Any Special And Important Reasons Why The Court Should Grant The Petition

Petitioners Frank and Helen McGee have failed to show any special and important reasons why the Court should grant their petition for a writ of *certiorari* ("petition") as required by rule 10. A reading of the petition shows that Mr. and Mrs. McGee are upset that the district court, the BAP, and the Ninth Circuit have held that the applicable state statutes of limitations applies to their claim in the County's bankruptcy. There are simply no federal questions or constitutional issues involved. The questions presented by Mr. and Mrs. McGee are important only to the parties involved.

B. Petitioners' Reargue Factual Determinations Found Against Them In The Lower Courts

Petitioners argued in the lower courts that the County made a special agreement with them to waive the applicable state statutes of limitations as to their claim for property tax refunds. In support of their arguments in the lower court they introduced the documents referred to in their petition at pages 2-3, arguing that those documents showed that the County waived the statutes of limitations. The bankruptcy court found against petitioner as to

whether or not those documents waived the statutes of limitations. [Petition App 17.] The Bankruptcy Appellate Panel affirmed the court's determination [Petition App 15] and the Ninth Circuit held that the BAP did not clearly err in finding that the County did not waive the statutes of limitations. [Petition App 3.]

The following re-arguments of the facts in this case are found in the petition:

> (1) "The County of Orange, by letter subsequent, and after some refund checks were issued, requested claimants to assert a claim for the remainder of the property tax refund in the U.S. Bankruptcy Court, Central District." [Petition 2-3.]

The letter referred to merely informed the recipients of property tax refunds that only a portion of the refund amount, as calculated by the County, had been authorized by the bankruptcy court and was being paid, and that the remainder of the refund was subject to further court order. The balances due on the refunds were paid pursuant to a later court order. The letter does not contain a waiver by the County of the statutes of limitations defense to any claims for property tax refunds. Under the County's Plan of Adjustment, the County retained, unaltered, all defenses under California property tax law to all refund claims, including the statutes of limitations.

> (2) "At the request of the County, a claim for property tax refund was filed . . . well within the required one year after notice, as required to satisfy California Revenue and Taxation Code 5097(a), and within the six-month requirement

> of California Revenue and Taxation Code 4831(a)." [Petition 3.]

The "request" that petitioners refer to was allegedly contained in a letter sent out by the County. The letter, which petitioners refer to as a "request," did not "request" that any recipient file a claim for a property tax refund. The letter accompanied all property tax refund checks and explained why only a portion of the refunds were being paid. The reasons stated in the letter are that the County portion was being held until further court order and that the portion included is only that part of the refund that is due from other taxing agencies. There is no language in the letter that waives any statutes of limitations. The Revenue and Taxation Code was not mentioned, let alone sections 5097(a) and 4831(a).

> (3) "This objection (that the claim was barred because it was untimely) was withdrawn by the County after a conversation between Appellant's Counsel and the County's outside Counsel, in which it was stated that: "overpayment of taxes is undisputed by the County of Orange and will be paid in full." [Petition 3.]

Petitioners contended in the lower courts that during a telephone conversation, their attorney had a meeting of minds with the County's outside counsel, in which the County, through a special (and secret) agreement, waived the applicable statutes of limitations to petitioners' claim for refunds of overpaid taxes for the years 1980-1991. The truth is that no such statement was made and even petitioners' allegations of that conversation failed to show a knowing understanding on both sides that the County was waiving all statutes of limitations as to petitioners'

claim. The County's actions and the County's Plan of Adjustment showed that it never waived any applicable statutes of limitations as to property tax refunds.

> (4) "This statement (that the County intended to waive all applicable statutes of limitations) was confirmed by letter sent to the Trustee and to County Counsel, Karen Carroll, dated August 18, 1996." [Petition 3.]

Karen K. Carroll was not, and is not, a deputy county counsel. Ms. Carroll worked for the bankruptcy law firm employed by the County for its Chapter 9 proceeding. The only evidence introduced by petitioners that the County had waived all statutes of limitations was the "confirming letter" prepared by petitioners' attorney. There is no reference in the letter to the applicable statutes of limitations and there is no waiver of those statutes expressed in the letter. The letter contains a misstatement of law: "Since the Claim is not Barred and could not be Barred since it was timely . . . ." The truth is that the applicable statutes of limitations did bar all claims prior to 1991. This is such an important fact, that petitioners' attorney would have mentioned it in the letter, if in fact he had discussed the County's waiver of the four-year statutes contained in Revenue and Taxation Code §§ 5097 and 4831 with Ms. Carroll. Finally, the letter ends by saying, "in the event this does not comport with your understanding, a hearing is hereby requested." Petitioners received their hearing on May 29, 1997 and the bankruptcy court determined that the notices and letters did not waive the applicable statutes of limitations.

As stated by the Ninth Circuit: "The BAP did not clearly err in finding that the County did not waive the statute of limitations." [Petition App 3.]

C. Petitioners' Misstatements Of Law

1. Petitioners Misstate The Holding In The *Sunrise Retirement Villa* Case

> a. "The undisputed holding of [*Sunrise Retirement Villa v. Dear (Placer County Assessor)*, 58 Cal. App. 4th 948, 68 Cal. Rptr. 2d 416 (1997), Petition App 18-34] was to strike down the statute of limitations in Cal. Rev. and Tax. Code § 4831(a) on facts similar to the case on hand." [Petition 6.]
>
> b. "Based on the above-cited Sunrise Retirement case, the California Appellant Court had determined that the four-year Statute of Limitations does not apply in situations such as here, where a mistaken change of ownership triggered incorrect evaluations over several years." [Petition 7.]

These statements misstate the holding in the *Sunrise Retirement Villa* case. *Sunrise Retirement Villa* did not strike down the applicable statutes of limitations for property tax refunds. *Sunrise Retirement Villa* held that errors on the property tax roll as to the base-year value of real property, which are not based on judgment as to value, could be corrected at anytime.

However, as the court pointed out: "There is a distinction between the reduction in a base-year value and a right to a refund of taxes. The base-year value is a control

figure from which an assessment is determined. The correction of the base-year value allows the assessor to determine whether there has been an overassessment or an underassessment. Thereafter, an application must be made for refund. (Citation omitted.)" *Sunrise Retirement Villa v. Dear*, 58 Cal. App. 4th 948, 956, 68 Cal. Rptr. 2d 416, 423 (1997).

Therefore, the court found: "Correction of the base-year value figure does not automatically entitle the taxpayer to a refund. (Citation omitted.) *Refunds are governed by separate provisions of the code, and the taxpayer may only recover a refund by complying with those statutes.* (Citation omitted.) As section 51.5, subdivision (d) states, if the correction reduces the base-year value, 'appropriate cancellations or *refunds of tax shall be granted in accordance with this division.*' "[1] (Emphasis added.) *Id.*, at 961.

Sunrise Retirement Villa stands for the rule that the assessor, or the assessment appeals board, must correct base-year non-judgment value errors, then revise the roll value for each year following the revised date, adding only the inflationary rate allowed by Cal. Const. Art. XIII A, § 2(b).

This is what the County actually did in regard to petitioners' residence. The County corrected the base-year value in 1980, then recalculated each years' property tax roll value, including the roll values for the years

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[1] The California Revenue and Taxation Code is divided into two divisions, property taxes and other taxes. Division 1 covers property assessments, equalization, taxation, collection, and refund procedures.

1992-1995. The County then calculated the refunds due for 1992-1994 pursuant to the new roll values. The County also revised the 1995 tax bill to reflect the new roll value, as it had not yet been paid. The County also determined that it could not make refunds for the years 1980-1991 because of the applicable statutes of limitations for refunds of property taxes.

2. Petitioners Misstate The BAP Memorandum Decision, The Plain Meaning Of The Language Of Cal. Rev. & Tax. Code § 2635 And The Cases Interpreting That Statute.

a. "The Panel further held that the notice required by Cal. Revenue and Taxation Code 2635 was not sent and the notices sent by the County did not satisfy the requirements set forth in California Revenue & Tax. Code 2635." [Petition 6.]

b. "In light of [*Bishop, McIntosh & McIntosh v. Molen*, 116 Cal. App. 3d 278, 172 Cal. Rptr. 38 (1991)], the duty to issue a 2635 [Rev. & Tax. Code § 2635] Notice triggering the One-Year Statute of Limitations still exists. . . . It would certainly not be equitable to force the Appellants [petitioners] back into the California State Court to file a writ of mandate to compel the County tax collector to issue a notice of *potential* tax refund as required by Rev. & Tax. Code § 2635. As was stated in the above-cited Molen case, there is evidence in this case of improper valuation and the Notice must be issued with Rev. & Tax. Code 2635." [Petition 8-9.]

These statements misstate the BAP Memorandum decision, the plain language of Cal. Rev. & Tax. Code § 2635 and the cases interpreting that statute.

The BAP's Memorandum decision is found at pages App 4-App 15 of the petition. The panel did not hold that California Revenue and Taxation Code § 2635 applied to the facts of the case.

Cal. Revenue and Taxation Code § 2635 provides that:

> "When the amount of taxes paid exceeds the amount due by more than ten dollars ($10), the tax collector shall send notice of the overpayment to the taxpayer. The notice shall be mailed to the taxpayer's last known address and shall state the amount of overpayment and that a refund claim may be filed pursuant to Chapter 5 (commencing with Section 5096) of Part 9."

At no time during the years 1980 through 1995 did petitioners pay an amount that exceeded the amount due on the tax bills sent by the County tax collector. Nor have petitioners alleged that they did so. Based on that fact alone, petitioners cannot seriously contend that the tax collector failed to comply with Cal. Revenue and Taxation Code § 2635.

Petitioners rely upon *Bishop, McIntosh & McIntosh v. Molen*, 116 Cal. App. 3d 278, 172 Cal. Rptr. 38 (1991) to argue that the tax collector has a duty, even now, to resurrect their time-barred claims as to tax years 1980-1991. [Petition 7-8.]

But, as the court in that case said:

> "The question presented here is whether a taxpayer who claims that the assessed value of his property should have been lower for certain years because it was subject to a scenic easement, but who has pursued no remedies within

> the four-year limitation period, is entitled to a writ of mandate compelling the tax collector to send a section 2635 letter in order to renew his right to file a claim. The trial court entered judgment denying the writ, and we affirm." *Id.*, at 279.

Petitioners failed to pursue their remedies within the four-year limitation period for each year 1980-1991. They are now seeking a refund for the years in which they sat on their rights. Just as the taxpayer in *Bishop, McIntosh & McIntosh v. Molen* was denied a writ of mandate to renew its right to file a claim, petitioners are not entitled to a writ of mandate to require the County to violate the applicable statutes of limitations, in this court or the state court.

As the Ninth Circuit found: "The BAP did not err in finding the statute of limitations barred the McGees' claim. *See* Cal. Rev. & Tax. Code § 5097(a)(2)." [Petition App 3.]

Revenue and Taxation section 5097(a)(2) provides, in relevant part, that:

> "No order for a refund . . . shall be made, except on a claim . . . [f]iled within four years after making of the payment sought to be refunded or within one year after the mailing of the notice as prescribed in Section 2635. . . .

No case or statute in California property tax law allows a taxpayer to obtain a refund for every past year for which the taxpayer might think that he should get a refund. And, no statute allows the tax collector to violate the law concerning the statutes of limitations as to property tax refunds.

The state statutes of limitations prevent the County from refunding the taxes claimed by petitioners for the years prior to 1991. Petitioners are arguing that this Court, or a state court through a writ of mandate, should simply order the County to violate the applicable state statutes of limitations on property tax refunds. That is not what *Sunrise Retirement Villa* requires nor is it what *Bishop, McIntosh & McIntosh v. Molen* will allow. Petitioners' arguments are apparently based on a serious misreading of each case. Neither case eliminates the statutes of limitations on property tax refunds.

THE NINTH CIRCUIT WAS CORRECT IN FINDING THAT THE BAP DID NOT ABUSE ITS DISCRETION IN DENYING EQUITABLE RELIEF

The Ninth Circuit found that "The BAP did not abuse its discretion in denying equitable relief. [Citations omitted.]" [Petition App 3.]

Petitioners' equity appeal to the court for relief outside the tax code is misplaced.[2] The lower courts' denial of equitable relief was within their discretion and was not an abuse of that discretion.

The issuance of equity relief is a matter of discretion, and the appellate court will not reverse unless there is a definite and firm conviction that the court below committed a clear error of judgment upon a weighing of the relevant factors. The lower courts, in their discretion,

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[2] *See*, "If this isn't a case for equity, then equity in the Bankruptcy Court *is dead*." [Petition 11.]

determined that equity should not overrule the applicable statutes of limitations.

Petitioners should not receive special benefits merely because they are pursuing their claims in the bankruptcy forum. Indeed, the Plan of Adjustment filed in this Chapter 9 proceeding classified all property tax refund claims as unimpaired. Under the Plan, each holder of a property tax refund claim retained all legal, equitable, and contractual rights each might have under California property tax law. The California legislature has determined that a four-year from date of payment statutes of limitations applies to property tax refund claims. Equity does not require that the court redetermine where that line should be drawn. Arguments could be made perhaps that it should be at 1 year, or 3 years, or 6 years, or 12 years, or 24 years, but it cannot be shown that the four-year line is inequitable or unfair.

A limitations statute "is entitled to the same respect with other statutes, and ought not to be explained away." *Shepherd v. Thompson*, 122 U.S. 231, 236, 7 S. Ct. 1229 (1887) (quoting *Clementson v. Williams*, 12 U.S. 72, 74, 3 L. Ed. 69 (1814)).

Here, the people of California, acting through their legislature, have chosen to enact a four-year limitations period for seeking a property tax refund as part of their procedure to collect taxes in an orderly fashion. This choice is not so manifestly inequitable as to amount to a denial of justice. The Court should respect the legislature's decision.

The County needs the security of knowing that at some point its collected taxes cannot be challenged. If a

limitations statute did not exist, or if such a statute was routinely disregarded by the courts, a county would be forever vulnerable to refund claims no matter how ancient the imposed levy. Errors committed decades ago could be alleged at any time so that a county would always be vulnerable to potentially heavy losses of revenue.

In this case, Petitioners' refund claim is $21,125.81 for a tax error made over the course of eleven years. An uncorrected error made on the tax rolls 10, 20, 30, or 50 years ago could easily add up to an extraordinarily large refund claim with the potential to wipe-out a county's coffers. The statutes of limitations thus grants the County a degree of certainty when it arranges its financial affairs, that ancient and potentially large tax claims will not drain the county budget.

The benefits of fiscal certainty are clear. A county enacts a budget, usually made up of tax revenue, so that it can fund public programs. If its tax collections were forever subject to challenge, a county could never be certain of its reservoir of revenue. Budgetary planning could become difficult, if not impossible. Such uncertainty would surely effect budgetary priorities and possibly public programs. A limitations line must be drawn otherwise the County would be forever subject to the financial turmoil caused by ancient and unpredictable tax refund claims. The California legislature chose to draw the line at four years. There is no equitable or public policy reasons for ignoring the clear limitations statute and subjecting a county or its taxpayers – who would ultimately pay any refund – to that level of uncertainty.

Petitioners were not without recourse over the eleven years they overpaid their property taxes. They could have easily verified whether their property's roll value was correct each year the assessment was made. *See* Cal. Rev. & Tax. Code § 1602. They also could have challenged an assessment each year it was made. *See* Cal. Rev. & Tax. Code § 1603 *et seq.* (procedures for filing applications for reduction of roll value assessments); Cal. Rev. & Tax. Code § 5240 *et seq.* (procedures for filing refund actions by taxpayers). With property ownership comes responsibilities. Among these responsibilities must be the requirement for property owners to diligently investigate whether they are being assessed the correct tax. That petitioners have failed to do so, does not mean that the Court should rescue them from their neglectful behavior.

California's tax code works both ways. If petitioners had been under-assessed on their property taxes, they could have asserted a limitations statute to preclude the County from collecting back taxes past four years. Under such circumstances, petitioners would have benefited from a roll value error. It cannot be said that all taxpayers are prejudiced by a four-year limitations statute.

The bankruptcy court did not abuse its discretion when it determined that petitioners had not proved that the equity power of the court should require the County to violate the applicable statutes of limitations as to their claim. After weighing all the relevant factors set forth above, the Court cannot have a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached.

CONCLUSION

The lower courts did not err in finding the statutes of limitations barred petitioners' claim. The courts did not clearly err in finding that the County did not waive the statutes of limitations. The courts did not abuse their discretion in denying equitable relief.

DATED: July 8, 1999

Respectfully submitted,

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